

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

In re: GUIDANT CORP. IMPLANTABLE  
DEFIBRILLATORS PRODUCTS  
LIABILITY LITIGATION

MDL No. 05-1708 (DWF/AJB)

This Document Relates to:

Lucille Banks, William Banks, James Benson,  
Cecil Butcher, Ana Maria Butcher, Carmella  
Fox, Alan Hallam, Louise Hallam, Mary  
Lauritsen, Ditler Lauritsen, Linda Morales,  
James Nagel, Rodney Parson, David Swinson,  
Winifred K. Swinson, Ruth Thornley,  
William Thornley, Lois E. Fleischmann,  
Horst J. Fleischmann, Freddie France, Jackie  
France, Jordan Gray, Ilene S. Grife, Barry J.  
Grife, Richard Heath, Jaree C. Heath,  
Lonabell Knisell, Brian P. Marcks, Jay Sayre,  
Robert Shaffer, Ruth Shaffer, Jerry Sibrel,  
Marlene Sibrel, Stanley Walston, Norma  
Walston, and Linda Marcks,

Plaintiffs,

v. Civil No. 07-2034 (DWF/AJB)

Guidant Corporation; Guidant Sales  
Corporation; Cardiac Pacemakers, Inc.; and  
Boston Scientific Corporation,

Defendants.

(as to Plaintiff Jay Sayre only)

**ORDER**

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Mary J. Williams, Esq., and Barry Hill, Esq., Hill Williams PLLC; D. Andrew List, Esq.,  
Clark Perdue Arnold & Scott Co LPA; James C. Peterson, Esq., Hill Peterson Carper Bee

& Deitzler, PLLC; and Thomas R. Anapol, Esq., Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley, counsel for Plaintiffs.

Debbie Moeller, Esq., Shook Hardy & Bacon LLP, and Joseph M. Price, Esq., Faegre & Benson LLP, counsel for Defendants.

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The Hill Williams PLLC law firm; the Clark Perdue Arnold & Scott Co LPA law firm; the Hill Peterson Carper Bee & Deitzler, PLLC, law firm; and the Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley law firm commenced this action on April 24, 2007, on behalf of Plaintiff Jay Sayre (“Plaintiff”). On May 7, 2008, Plaintiff’s counsel, James C. Peterson, Esq., from the Hill Peterson Carper Bee & Deitzler, PLLC, law firm, filed an Application to Withdraw as Counsel of Record (Civ. No. 07-2034 (DWF/AJB), Doc. No. 6<sup>1</sup>) on behalf of his law firm and the firms of Hill Williams PLLC, Clark Perdue Arnold & Scott Co LPA; and Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley. In a letter dated May 5, 2008, the Court allowed Plaintiff to respond in writing to the motion within one week. The Court received a response from Plaintiff via e-mail on May 12, 2008.

An attorney may be permitted to withdraw as counsel of record only by order of the Court. D. Minn. LR 83.7(a). “Withdrawal without substitution may be granted only by a motion before the Court, for good cause shown.” D. Minn. LR 83.7(c). James C. Peterson, Esq., asserts that despite multiple and diligent efforts by counsel, in coordination with Barry Hill and the law firm of Hill Williams, to contact Plaintiff and to

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<sup>1</sup> Counsel for Plaintiff filed the Motion for Substitution of Parties only in the individual case (Civil No. 07-2034 (DWF/AJB), Doc. No. 6). The motion should also have been filed in the master case, MDL 05-1708 (DWF/AJB).

obtain his signed release of the Defendant in this matter, Plaintiff, after previously agreeing to participate in the settlement, now refuses to sign the required release and will not communicate any further with counsel. Plaintiff has been advised that these firms intend to withdraw from representation. Plaintiff objects to the settlement, but does not object to the withdrawal of counsel.

Based on a review of the file, and given the requirements necessary to proceed under the Master Settlement Agreement, the Court finds that good cause exists to allow the Hill Williams PLLC law firm; the Clark Perdue Arnold & Scott Co LPA law firm; the Hill Peterson Carper Bee & Deitzler, PLLC, law firm; and the Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley law firm to withdraw from representing Plaintiff. The Court concludes that Plaintiff's interests are best served if he is allowed to find new counsel to represent him.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Application to Withdraw as Counsel of Record (Civ. No. 07-2034, Doc. No. 6) is **GRANTED**.
2. The Hill Williams PLLC law firm; the Clark Perdue Arnold & Scott Co LPA law firm; the Hill Peterson Carper Bee & Deitzler, PLLC, law firm; and the Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley law firm shall inform Plaintiff Jay Sayre of the substance of this Order (by U.S. Mail) and provide him with the contact information for Guidant and the Plaintiffs' Lead Counsel Committee. They shall also attempt to provide Plaintiff with his file and all case documents, at no cost to him.

3. The Hill Williams PLLC law firm; the Clark Perdue Arnold & Scott Co LPA law firm; the Hill Peterson Carper Bee & Deitzler, PLLC, law firm; and the Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley law firm shall provide Guidant and the Plaintiffs' Lead Counsel Committee with Plaintiff's current contact information, including mailing address, telephone numbers, and e-mail address.

4. Plaintiff is encouraged to immediately seek new counsel. If he cannot afford to do so, the Court encourages him to investigate the possibility of a volunteer attorney service in his area. The Court also encourages Plaintiff to contact MDL Plaintiff Attorney Elizabeth Peterson at 612-341-0400 to discuss his options under the Master Settlement Agreement.

5. The Clerk of Court shall mail a copy of this Order to Jay Sayre, 449 Aarons Creek Road, Morgantown, WV 26508.

Dated: May 16, 2008

s/Donovan W. Frank  
DONOVAN W. FRANK  
Judge of United States District Court